

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x Chapter 11
In re:
SEARS HOLDINGS CORPORATION, et al.
Debtors
Case No. 18-23538 (RDD)
(Jointly Administered)

-----x
**SECOND SUPPLEMENTAL OBJECTION TO CURE AND ADEQUATE ASSURANCE
INFORMATION BY DART WAREHOUSE CORPORATION, RE DKT. 3761,
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL EXECUTORY CONTRACTS
(SUPPLEMENTING DART’S JANUARY 29, 2019 AND MAY 2, 2019 OBJECTIONS
DKT. 2165, 2167 and DKT. 3540)**

DART Warehouse Corp. (“DART”), by its undersigned counsel, submits this second supplemental objection in response to the May 8, 2019 “Notice of Assumption and Assignment of Additional Executory Contracts” (“Assumption Notice”) (Dkt. 3761) filed by debtor Sears Holdings Corporation (“Debtor” or “Sears” or “Innovel”).

As discussed below, DART previously objected on January 29, 2019 and May 2, 2019, with respect to the propose cure and adequate assurances on the Master Services Agreement (“MSA”) between it and debtor Innovel Solutions, Inc. (See Dkt. 2170 and 3540). The instant filing is therefore supplemental and informational and does not obviate DART’s preservation of its objections through its earlier January 2019 and May 2019 filings.

The Unexpired Sub-Lease Connected to the Executory Services Contracts

Dedaux Enterprises, LLC owns the warehouse located at 1835 Ferry Road, Naperville, IL. 60563 (“the Naperville Warehouse”) and leases it to DART. DART, in turn, sub-leases the Naperville Warehouse to debtor Innovel Solutions under a March 24, 2011 sublease; DART also

re-lets a smaller portion of the Naperville Warehouse back from Innovel under a Memorandum of Sub-Lease dated March 24, 2011 (DART will refer to the Sub-Lease and the re-let lease collectively as “the Naperville Leases”).

The Naperville Leases are unexpired and they are the subject of a separate Stipulation and Order Extending Time for Assumption and Assignment under 11 U.S.C. §365(d)(4) dated May 13, 2019 (Dkt. 3833) (“the Extension of Assumption of Leases”).

The MSA and Statement of Work Contracts at the Naperville Location

DART operates the Naperville Warehouse as a fulfillment center for Sears under two connected executory service contracts, a Master Services Agreement (“MSA”) and a Statement of Work (“SOW”), both dated May 1, 2011 (collectively, “the Naperville MSA and SOW”). As amended and extended, the Naperville MSA and SOW run until December 31, 2020.

Debtors’ May 8, 2019 Notice of Assumption and Assignment (Dkt. 3761) refers only to the MSA (see Dkt. 3761, p. 54, ref. no. 292) but because of the operational linkage between the MSA and the SOW, DART presumes Debtors must be intending to assume both executory contracts.

Innovel is in default under the MSA and SOW in the current amount of \$400,000.

DART objected on January 29, 2019 as to both the MSA and SOW on the grounds the Debtors had listed no proposed cure amounts and there was no assurance as to future performance (Dkt. 2165 and 2167) and DART objected a second time on May 2, 2019 (Dkt. 3540) when Debtors had also given notice of intent to assume and assign the Naperville leases.

The Parties are Currently in Cure Negotiations

DART is currently in negotiations with the Debtors and with the buyer, Transform Holdco

(“Transformco”) regarding the Naperville leases (as reflected by the Extension of Assumption of Leases) and, separately, on the MSA and SOW and discussion of the parties have been informative and beneficial.

DART is hopeful the lease and contract negotiations will continue to be fruitful and no hearings will be required with respect to cures on either the Naperville leases or the MSA and SOW. DART is therefore filing and serving this second supplemental objection to preserve its right to a hearing on a cure for the MSA and SOW if one becomes necessary, and to emphasize again the close connection between the Naperville leases and the Naperville MSA and SOW.

THEREFORE, DART prays for the following relief:

1. That its objections with respect to assumption and assignment of the MSA and SOW be deemed preserved;
2. That it retain its right to a hearing on assumption and cure of the MSA and SOW to the extent no solution is reached between it, the Debtors and Transformco; and
3. For such other and further relief as the court deems just and proper.

Dated: May 16, 2019
San Diego, CA

LAW OFFICE OF WILLIAM P. FENNELL, APLC

By: /s/William P. Fennell
William P. Fennell, Esq.
401 West A Street, Suite 1800
San Diego, CA 92101
Telephone: (619) 325-1560
Facsimile: (619) 325-1558
Email: william.fennell@fennelllaw.com

Attorneys for DART Warehouse Corporation